

**COMPLIANCE BOARD OPINION NO. 95-6**

October 18, 1995

*Mr. Richard Zipper*

The Open Meetings Compliance Board has considered your complaint of July 17, 1995, in which you allege that the Anne Arundel County Board of Education (hereafter, "School Board") may have violated the Open Meetings Act by holding a private discussion during lunch about an item on the agenda at the School Board's meeting on July 13, 1995. The item in question concerned the proposed implementation of a French Immersion Program at Crofton Woods Elementary School.

In your complaint, you state that the School Board's public session on July 13 consisted of two parts, one in the morning and one in the afternoon, after a break for lunch. You summarize your concern this way:

After two hours of testimony from the staff and public and after debate by the School Board itself a vote was taken (just before lunch) to deny the funding for that program. However, after all interested parties left (including one School Board member) another vote was taken (after lunch) reversing the original outcome.

As the Board in general expressed great relief in having resolved this issue before lunch, I find it very suspicious that they would raise it again after lunch ... unless there were unofficial meetings during lunch. I believe that the spirit and possibly the letter of Maryland's Sunshine Laws may have been broken.<sup>1</sup>

In a timely response on behalf of the School Board, Mr. Joseph H. Foster, the President of the Board, denied that any violation of the Act had occurred.

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<sup>1</sup> Your letter also expresses concern about an alleged violation of the School Board's own procedures. The Open Meetings Compliance Board is limited by law to issuing opinions about alleged violations of the Open Meetings Act. Hence, we do not comment on any issue of compliance by the School Board with its own procedures.

Mr. Foster notes that he was present “at all times from the moment when the Board meeting was called to order until the time when the meeting was adjourned.” He states unequivocally “that the Board did not discuss the French Immersion Program during the lunch break.” The School Board’s minutes of its July 13 meeting refer to discussion of the French Immersion Program issue only in the context of the open session. The only action reflected in the minutes is a vote to request an Attorney General’s opinion on certain issues concerning the Immersion Program.

The minutes reflect nothing about the School Board’s conversation at lunch. Nor should they, if the conversation was properly limited. A quorum of a public body may eat lunch together in private, but they must refrain from conducting public business during that time. If the School Board members, as a group, limited themselves to social conversation at lunch, the Act would not apply to that interlude in the meeting. *See* §§10-502(g) and 10-503(a)(2) of the State Government Article.

The Compliance Board has neither the statutory authority nor the investigative tools to make independent factual determinations about what goes on behind closed doors.<sup>2</sup> Therefore, the Compliance Board must limit itself to the following conclusion: If the School Board did not discuss the French Immersion Program during lunch, there was no violation of the Open Meetings Act.

OPEN MEETING COMPLIANCE BOARD

Courtney McKeldin  
Tyler G. Webb\*

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<sup>2</sup> If a public body acknowledges that a topic was discussed in a closed session, the Compliance Board may make reasonable inferences from the public body’s minutes about the likely nature of the discussion. *See, e.g.*, Compliance Board Opinion 94-5, at 9 (July 29, 1994). That problem is distinguishable from a flat denial that a topic was discussed at all.

\* Chairman Walter Sondheim, Jr. did not participate in the preparation or issuance of this opinion.